

RECEIVED

SEP 15 1995

Before the
Federal Communications Commission
Washington, DC 20554

FCC MAIL ROOM

In the Matter of

DOCKET FILE COPY ORIGINAL

Establishment of Rules and Policies for) IB Docket No. 95-91
the Digital Audio Radio Satellite Service) GEN Docket No. 90-357
in the 2310 - 2360 MHz Frequency Band) RM No. 8610

NOTICE OF PROPOSED RULEMAKING

Adopted: June 14, 1995

Released: June 15, 1995

Comment Due Date: Friday, September 15, 1995

Comments by:

Robert T. Wertime
207 Leitersburg Street
Greencastle, PA 17225

INTRODUCTION

1. Since 1988, the undersigned (terrestrial) radio broadcast proponent has participated seven times in four FCC dockets. These dockets have included the translator docket (1988), GEN Docket 89-554 (WARC - 92), GEN Docket 90-357 (DAB/DARS), and Mass Media Docket (MMD) 91-140. All of these dockets dealt with issues which related to the undersigned's interest in obtaining a radio broadcast license.

2. Two themes pervaded all seven of these docket filings: maximized diversity in broadcast-radio ownership opportunities, and conservation of unallocated spectrum for those who have no prior radio holdings (or, very few of them). These themes

No. of Pages rec'd 049
List ABOVE

continue within this NPRM filing, but are modified somewhat, due to the medium of broadcasting under consideration.

3. Even though this NPRM is satellite-oriented, there are several aspects which may affect all terrestrial broadcasters at some point in the future. Noting this and several other reasons, the undersigned desires to participate in this proceeding to the extent accomplished.

SDARS Licensing and Ownership in The Public Interest

4. The FCC seeks comment on three licensing approaches (¶¶ 31-40), and other licensing/ownership/public interest aspects. These licensing approaches center around the four applicants in this proceeding: Satellite CD Radio (CD Radio), Primosphere Limited Partnership (Primosphere), Digital Satellite Broadcasting Corporation (DSBC), and American Mobile Radio Corporation (AMRC) [names quoted, in order, from ¶ 7 in the NPRM].

5. The FCC appears to have locked itself into three options as being the only ones for consideration (¶ 33). Of the three, the first option may be the most logical.

6. The four applicants used legal means at their disposal, for applying for the spectrum allocated, and were granted a cut-off date as a protection from further applications (¶ 34). Is there a reason why the FCC would renege on the cut-off date principle, which was granted?

AUCTIONS

7. The FCC requested comment on competitive bidding procedures (§ 90, et seq.). The question of "unjust enrichment" was raised (§ 97-C).

8. If SDARS services are to be deployed in timely fashion, without draining the applicants past failure (§ 90), then the logical approach would be to assess REASONABLE spectrum use fees, based on realized income, AFTER the applicants are on the air. Huge up-front fees and exorbitant spectrum auction amounts can only hurt those with less capital, and ensure the well-monied a place in space. Those with the most money don't necessarily have the best programming, as we all know from terrestrial radio experiences.

9. The FCC, most disturbingly, continue\$ on and on after § 90, about auction\$ and up-front fee\$. Are we seeing desires for "unjust enrichment", at this point? The best way for the FCC to avoid its own unjust enrichment would be to be fair in spectrum fee assessment.

10. Unjust enrichment on the part of the applicants must also be guarded against. Spectrum use fees, and needful (expensive) satellite costs should help keep this aspect in line.

MASS MEDIA CONCERNS

11. SDARS, as purported by the applicants, looks more like mass media broadcasting at a distance, even though

subscription-based services are planned. Because of this mass media aspect, terrestrial broadcasters are worried (§ 20). Natural thinning of the AM band will probably occur, but, given its talk-format nature, should survive quite well if managed well. FM may take a real hit, in major format types. Niche programmers will probably increase, with the advent of SDARS programming. "Spectrum cleansing" won't hurt, and may improve the quality and availabilities of presently under-heard programming.

12. There's another twist in this mass media idea. SDARS licensees cannot be compared with Common Carrier licensees. Personal communications, and the likes of Music Choice and DMX are local, and do not appear to be broadcast in the form of mass media radio. Telephone companies have sources of revenue wherewith they can afford spectrum auctions. The FCC should note these differences, in their review of the spectrum auction process.

EXPEDITIOUS LICENSING

13. As noted in NPRM § 34, the four SDARS applicants have gone to expensive lengths, just to get this far. If the FCC must remain locked in to one of the three choices, as mentioned in § 33, then why would there be a reason to not grant a construction time period, followed by timely licensing?

14. If the FCC should grant four or five licenses for

the entire said spectrum, or 25, or 100 licenses, the pioneers should be treated with priority, in the licensing process. Re-applications and mutual exclusivity shouldn't be necessary.

SUBSCRIPTION SERVICE

15. The idea of subscription service should ease the impact on terrestrial stations. This has been advanced by three of the proponents (see ¶ 22 in the NPRM). Advertising should be all right, if only on a national basis (never regional or local). In order to protect terrestrial stations, a daily limit on advertising time may be advisable.

CROSS-OWNERSHIP.

16. It is requested that SDARS licensee not be permitted to own, operate, or have interest in any terrestrial radio station. Also, no satellite-feed types of stations.

17. The reasons for this are simple. The entire USA land mass (including territories), equals 3,619,644 square miles (source: World Book Encyclopedia). Since there is a lot of interstitial water between the Virgin Islands, Hawaii, etc., and, accounting for some water around the Alaska and mainland coastlines, the total should be around 3.65 million square miles of serviceable area via radio. This area is equivalent to 5,874,877 square kilometers (rounded upward to 5,875,000 square kilometers for good measure).

18. Just one Satellite DARS (SDARS) channel will be the equivalent of either 2,473 Class A FM stations, or 163½ Class C FM stations, all operating simultaneously at maximum ERP (effective radiated power) and maximum HAAT (height above average terrain), as appropriate for each class -- out to the F(50,50) 54 dBu (0.5 millivolt) contours. These figures were calculated via 47 CFR 73.333, and the use of the standard circle-area formula $A=\pi R^2$.

19. Using simple multiplication, 30 channels per licensee would be the equivalent of 71,490 maximum Class A FM's, or 4905 maximum Class C FM's, all without any air-space between their F(50,50) 54 dBu (0.5 millivolt) contours!

20. The FCC didn't appear to address this ownership issue, in the NPRM. Regardless of whether they'd need it or not, terrestrial owners will likely be asking for no limits on the numbers of stations that they can own, AM and/or FM, mix or match. (Please keep the limits!)

21. Cross ownership of other radio outlets by SDARS licensees -- regardless of the number of channels per licensee -- is a very serious issue. The undersigned respectfully requests the FCC to address and resolve this issue during this proceeding.

FOREIGN OWNERSHIP.

22. In the mind of the undersigned, SDARS looks a lot like mass media broadcasting. Noting the immense quality coverage areas per channel, the present rule should apply.

To the best of the knowledge of the undersigned, this limit stands at 25% foreign interest/ownership of terrestrial stations.

CONCLUDING THOUGHTS.

23. First, the thought of only four different licensees, with 30 national channels apiece, is unsettling. A more equal balance among licensees could be achieved by giving each of the four said pioneers five channels apiece (with control channel access), and then by giving each licensee, thereafter, one channel apiece (with control channel access). If a single satellite transmission standard is adopted, and one complete set of satellites launched, this would enlarge the monetary pool among the licensees, and thus make the financial burdens easier to manage.

24. More licensees, as proposed, would also eliminate the chance of major format repetitions, among the four pioneers. True, there would be some repetition, but there would also be chances for greater programming diversity. Lack of diversity within given locales has led to financial difficulties among stations, in the past.

25. This concludes this filing on RM 8610. Thank you for your time and attention.

Respectfully submitted,

Robert T. Wertime

Robert T. Wertime

September 13, 1995